

- 7.3.2.4.6 The new server subnet should connect to the L3 switch, as should the new user subnets, via L2 switches.
- 7.3.2.4.7 As higher speed WAN options become available, the should connect to the L3 switch within the school.
- 7.3.2.5 **Placement of L2 switches.** The other fundamental design issue for school infrastructure is switch placement for L2 switches. STIP should recommend one of three options for the placement of the L2 switch based on the best value to the Owner and the needs and logistics of each school:
 - 7.3.2.5.1 In the MDF with the L3 switch;
 - 7.3.2.5.2 In an IDF between the MDF and the classroom;
 - 7.3.2.5.3 In the classroom.
- 7.3.2.6 **Develop and review IP addressing assignments.** The Owner desires to have a consistent IP addressing system.
- 7.3.2.7 Develop standard switch images / configurations.
- 7.3.2.8 Define required connection testing of the school cabling and network switches.
- 7.3.2.9 Develop switch installation scripts.
- 7.3.3 **Cable Design.** All cable design and installation shall conform to the following industry standards:
 - 7.3.3.1 TIA/EIA-568A Commercial Building Telecommunications Wiring Standard.
 - 7.3.3.2 TIA/EIA-568A-(1,2,3,4 &5) Propagation Delay and Delay Skew Specifications for 100 ohm,
 - 7.3.3.3 4-pair cable, and all Commercial Building Standards Updates
 - 7.3.3.4 TIA/EIA-569-A Commercial Building Standard for Telecommunications Pathways and Spaces
 - 7.3.3.5 TIA/EIA-569-A-(1,2,3&4) Commercial Building Standard for Telecommunications Pathways and Spaces Addendums.
 - 7.3.3.6 TIA/EIA 606 Administration Standard for the Telecommunications Infrastructure of Commercial Buildings.
 - 7.3.3.7 TIA/EIA 607 Commercial Building Grounding and Bonding Requirements for Telecommunications.
 - 7.3.3.8 TIA/EIA TSB-36 Additional Cable Specifications for Unshielded Twisted-Pair Cables
 - 7.3.3.9 TIA/EIA TSB-40-A Additional Transmission Specifications for Unshielded Twisted-Pair Connecting Hardware

- 7.3.3.10 TIA/EIA TSB-67 UTP Link Performance Testing
- 7.3.3.11 TIA/EIA TSB-95 Additional Transmission Performance Guidelines for 4-pair 100 ohm Category 5 Cabling
- 7.3.3.12 American National Standards Institute (ANSI) C2 National Electrical Safety Code
- 7.3.3.13 National Fire Protection Association (NFPA) 70 National Electrical Code
- 7.3.3.14 NFPA 75 Protection of Electronic Computer/Data Processing Equipment
- 7.3.3.15 Uniform Building Code: 47 Code of Federal Regulations (CFR) part 68 and 29 CFR 1926/1910 OSHA Safety and Health Standards.
- 7.3.4 **Cabling Design Assumptions.** This Section of the RFP is based on the following key design assumptions.
 - 7.3.4.1 Intercom and Media retrieval system selection is not a part of this RFP. Owner has, through a separate RFP, selected an intercom and media system.
 - 7.3.4.2 Media runs from the MDF to the IDF, if required, will be an average of 225 feet in length.
 - 7.3.4.3 STIP is responsible for developing a Local Area Network (LAN) school design. The Wide Area Network (WAN) is not in scope for this RFP.
 - 7.3.4.4 Three sites affected by STIP's performance under this RFP have been declared as "Historical Buildings," Reynolds High School, Old Town Elementary and Wiley Middle School.
- 7.3.5 **Data Cabling Design Assumptions.**
 - 7.3.5.1 The average data drop length to use for this RFP is 225 feet for each data drop.
 - 7.3.5.2 The number of classrooms per school is being based on the documentation provided by the Winston-Salem Forsyth County Schools.
 - 7.3.5.3 It is assumed that wall penetrations will not exceed 2 inches in diameter.
 - 7.3.5.4 It is assumed that every school that is multistory building shall need one (1) core drill per floor.
 - 7.3.5.5 It is assumed that every school shall require a wall penetration from the hallway into each classroom.
 - 7.3.5.6 Every floor core drill or wall penetration shall have a sleeve installed with an insulated bushing on each end. All penetrations shall be fire stopped at the completion of the job.
 - 7.3.5.7 It is assumed that the pathways from the IDF cabinets/rooms to the classrooms shall be the space above the dropped ceilings in the hallways. The cables shall be supported by "J" hooks placed every 48"

to 60" or shall be placed in cable tray such as G.S. Metals "Flextray" or similar product if space is available and cable count requires it.

- 7.3.5.8 Fiber optic cables shall be a "MIC" style (indoor/outdoor) fiber optic cable that is suitable for installation in a protected outdoor environment but does not have to be transitioned to an "inside" rated cable within 50 feet of the point of entrance. Fiber optic cables shall be terminated at both ends on "ST" style connectors and placed in a protective fiber optic housing with "ST" bulkheads. All fiber optic strands and cables shall be labeled with both numbers and far end location/remote building number or name. Fiber optic cables shall all be tested bi-directionally.

7.3.6 Network Electronics Design Assumptions.

- 7.3.6.1 Title for Cisco products will be passed to WSFCS upon completion and acceptance of the work. At the time of final completion, warranty period will commence.
- 7.3.6.2 SMARTnet maintenance may be purchased at time of hardware/software purchase if required to receive discounts stated in this RFP. SMARTnet maintenance will be provided in accordance with Cisco SMARTnet maintenance terms.

7.3.7 Wireless LAN Engineering Design Services. The objective of this task as described in 7.1.6 above is to design, procure the necessary equipment for and install a wireless connectivity system for the transfer of electronic data and information from mobile classrooms units (MCUs) to a school's LAN and the internet. Wireless connectivity will also be installed in Media Centers, common areas, cafeterias, gyms, auditoriums and conference rooms. The schools with MCUs are listed at Tab 14. The major sub tasks are:

7.3.7.1 Gather Requirements and Perform Assessment.

- 7.3.7.1.1 Review WSFCS existing network topology documentation.
- 7.3.7.1.2 Assess the validity of a wireless LAN solution for the WSFCS environment.
- 7.3.7.1.3 Assess the existing Information Technology (IT) and site infrastructure environments to determine the viability of supporting a wireless LAN.
- 7.3.7.1.4 Evaluate path requirements such as line of sight, potential obstacles (hills, trees, buildings, etc.), and distance.
- 7.3.7.1.5 Evaluate potential requirements for cable support (type and locations), power support (type, location of source, loading), equipment mounting, and system grounding locations.
- 7.3.7.1.6 Document findings in a Wireless LAN Network Assessment document.

7.3.7.2 Wireless LAN System Design. The purpose of the Wireless LAN system design is to develop a system design for implementing wireless technology. The major sub-tasks are:

- 7.3.7.2.1 Review and analyze the Owner's site survey data.
- 7.3.7.2.2 Evaluate the connectivity requirements.
- 7.3.7.2.3 Review bandwidth requirements to ensure the design provides for sufficient capacity.
- 7.3.7.2.4 Design the IP network configurations.
- 7.3.7.2.5 Develop a logical network design (functional and performance requirements) and the physical network topology (Ethernet).
- 7.3.7.2.6 Compile maps of coverage areas indicating signal quality for the micro cellular architecture indicating Access Points and adapter card configurations.
- 7.3.7.2.7 Compile detailed listing of equipment, materials and accessories, antennae orientations, frequency plan, installation location(s) and mounting details, required to implement the design.
- 7.3.7.2.8 Document the location and types of cable and power, grounding and special mounting preparation requirements.
- 7.3.7.2.9 Document design exceptions with respect to RF performance (freezers, coolers, x-ray rooms, elevators, microwave ovens, metal objects, etc.).
- 7.3.7.2.10 Develop test criteria to verify coverage using the Client Utility, testing for link quality and roaming capability, and validating minimum data rate requirements used in the design parameters.
- 7.3.7.2.11 Develop parametric specifications necessary to achieve *wireless connectivity for your future installation of Network Interface Cards (NICs)*.
- 7.3.7.2.12 Develop integration instructions for connecting Access Points into the existing wired LAN infrastructure.
- 7.3.7.2.13 Prepare the Wireless LAN System Design Report.
- 7.3.7.3 **Key Assumptions Regarding Design of Wireless RFP.** This RFP is based on the following key assumptions.
 - 7.3.7.3.1 Some services in this RFP may be performed by an STIP subcontractor.
 - 7.3.7.3.2 Work under this contract *will not be performed during school hours unless otherwise mutually agreed upon by STIP and WSFCS.*
 - 7.3.7.3.3 Any changes to the building and/or outdoor area may affect the radio frequency (called "RF") coverage for the surveyed

location. This may result in performance variations from the RF information provided by the site survey.

7.3.7.3.4 Access Point means a connection allowing access into a LAN.

7.3.8 **Electrical, HVAC and Building Design Services.** The purpose of the electrical, HVAC and building design is develop related building improvements and renovations necessary to support installation of the technology systems described in the RFP. The design shall include, but is not limited to:

7.3.8.1 New wiring closets/equipment locations and retrofits for existing wiring closets/equipment locations, (general construction buildout, HVAC, lighting, construction permits) as needed to meet the technology goals of this RFP.

7.3.8.2 The design of the CATV replacement systems and/or possible relocation and reuse of CATV.

7.3.8.3 The evaluation of existing telephone system; the determination of the cost effectiveness and performance capability of integrating the telephone system with the data cabling and intercom systems such as the use of VoIP telephones; and, if requested and approved by Owner, the design of an integrated telephone system.

7.4 **Procurement Services.** The STIP is to seek and obtain quantity discount, as a percentage of the manufactured suggested retail price, for each of the major items of equipment listed in Section 7 of the RFP that will be provided during the term of the agreement based on a "preferred provider" agreement with one or more suppliers.

7.4.1 The STIP shall be compensated for procurement services as part of its Management Fee.

7.4.2 All products must be approved by WS/FCS prior to STIP placing its order. WSFCS reserves the right to review product specifications and if any product does not meet STIP or WSFCS product safety specifications, STIP will work with WS/FCS to identify an alternate product. Procurement of an alternate product will occur only upon your approval.

7.4.3 STIP may procure products listed on the NC State Procurement Contracts. If products are not listed on the NC State Procurement Contracts listing or if STIP may obtain better prices buying off State contract as provided by NCGS §115C-522.1, STIP may procure them as provided by NCGS §115C-522.1 and regulations or as approved via particular purchase order. WSFCS reserves the right to review product specification and if any product does not meet WSFCS product safety specifications, STIP will work with WS/FCS to identify an alternative product. Procurement of an alternative product will occur only upon WS/FCS approval.

7.4.4 The equipment and deliverables to be procured by STIP includes but is not necessarily limited to:

7.4.4.1 Fiber Optic Cabling

7.4.4.2 CAT5E cabling

7.4.4.3 Video Cabling

7.4.4.4 Cable Termination Equipment

7.4.4.5 DSU's

- 7.4.4.6 Exposed wiring pathways
- 7.4.4.7 Racks-patch panels-cabinets
- 7.4.4.8 Televisions
- 7.4.4.9 TV brackets or wall mounts
- 7.4.4.10 Electrical components
- 7.4.4.11 Routers
- 7.4.4.12 Layer 2 and 3 Switches
- 7.4.4.13 Switch enclosures
- 7.4.4.14 UPS Devices
- 7.4.4.15 Fiber Termination Enclosures
- 7.4.4.16 Wireless airports

7.5 **CONTRACTUAL SERVICES.** The purpose of this section of the RFP is to describe the Scope of the Work to be performed by Prime or Trade Contractors in up to fifty-nine (59) WSFCS schools under contract and supervision of the STIP serving as a "Construction Manager" or a "Construction Manager at Risk", as defined in NCGS §143-128.1. In the event, the STIP desires to perform some of these services, it must comply with the provisions of NCGS §143-128.1(c). These services include, but are not necessarily limited to:

7.5.1 **Install and Test Cabling and/or Wiring.** STIP, as a construction manager, will sub-contract for the procurement and installation of the designed cabling and wiring specified in this RFP and test the cables and wires once installed per the specifications. The sub-tasks are:

7.5.1.1 The cabling and wiring systems shall be installed in a professional manner by persons skilled and certified in the trades represented by the work, in accordance with the local building codes and applicable provisions of the National Electrical Code (NEC), except where specifications in the system design and specifications exceed Code and NEC requirements.

7.5.1.2 All electrical materials and equipment installed shall be of new manufacture, and approved by Underwriters Laboratories, Inc. (UL) and shall bear the UL label.

7.5.1.3 The contractor shall mark all data, power, intercom and CATV distribution panels, cables, and outlet plates with appropriate labels. These labels shall be MACHINE PRINTED on proper label material, and they shall have "permanent" adhesive to attach them to the cables. Labels shall be installed as follows:

7.5.1.3.1 One label at each end of each cable prior to pulling. These labels do not survive the stripping back of the cable sheath.

7.5.1.3.2 One label at each end of each cable at the end of the cable sheath, after stripping.

7.5.1.3.3 One label on the inside of each outlet box, plus one label on the outside of each faceplate, in the space provided.

7.5.1.3.4 One label at the end of each cable where it enters the connector in the back of the distribution panel, plus one label on the front of the distribution panel, centered below or above each associated cable jack. The labels on the cable at

the back of the panel and within the outlet box are the same labels as dictated by item #2.

- 7.5.1.4 The contractor shall make a final test of all cable runs between the wall faceplate and the distribution panel(s) as well as all newly installed telephone cables between the faceplate modular jack and the punch down blocks in the MDF or IDF. All drop and backbone cables shall be tested. Tests will be done as specified by TIA/EIA 568-A-5 and TSB-67 or later standards.
 - 7.5.1.5 All test results shall be recorded on a test form or printed from the test equipment and provided to the customer in both hard copy format and a soft copy diskette or CD.
 - 7.5.1.6 All equipment racks shall be grounded in accordance with the TIA/EIA-607 Bonding and Grounding Standards. Each rack must be individually connected to the TGB grounding bar and not serially connected with the other racks.
- 7.5.2 **Install and Configure Network Electronics Equipment.** The objective of this task is to procure, configure and install the equipment needed for effective system operation. The Subtasks are:
- 7.5.2.1 Procure hardware in accordance with Preferred Customer agreements negotiated and obtained by STIP in behalf of Owner.
 - 7.5.2.2 Install Cisco network electronics hardware.
 - 7.5.2.3 Perform power on system test.
 - 7.5.2.4 Configure the Cisco switches with the standard image and run the installation script to configure site-specific parameters (e.g., IP address, default gateway, etc.).
 - 7.5.2.5 Perform verification of network connection by attaching a laptop PC to a switch port in the IDF and PINGing the core (Layer 3) switch in the MDF and PINGing the router.
 - 7.5.2.6 Provide in-the-field hands on training to WSFCS technical staff on logical design, switch configurations, high-level switching functions and capabilities.
 - 7.5.2.7 Installation of any hardware, software and network electronics is included in the RFP (e.g., intercom systems, media retrieval, and routers, DSUs/CSUs, repeaters, modulators).
- 7.5.3 **Wireless LAN Equipment Installation.** The purpose of this task is to perform the physical installation of the wireless LAN equipment. The major sub-tasks are:
- 7.5.3.1 Install wireless equipment in schools as designed.
 - 7.5.3.2 Tag installed assets and document their locations in an Asset Documentation Listing.
 - 7.5.3.3 Coordinate testing of installed equipment in accordance with the prerequisite documentation.

7.5.4 School Site Assumptions. This Section of the RFP is based on the following key assumptions.

- 7.5.4.1 Work under this RFP will be performed at sites within the WSFCS district and will not require travel to school sites outside district boundaries.
- 7.5.4.2 Work to be performed at specific schools will be mutually agreed to and scheduled with STIP and WSFCS at least ten (10) business days prior to the commencement of the work.
- 7.5.4.3 STIP and its subcontractor(s) will be given reasonable access to all buildings by mutual agreement and coordination of parties. STIP and its contractors understand that the work described in this RFP will be performed in actively operative elementary or secondary school buildings. STIP and its subcontractors agree to take reasonable precautions necessary to provide for the safety of school children from entering the construction site or an area where materials are stored.
- 7.5.4.4 Work under this contract will not be performed during school hours unless otherwise mutually agreed upon by STIP and WSFCS.
- 7.5.4.5 STIP will provide access badges, keys and combinations or escorts to perform the work described in this RFP.
- 7.5.4.6 Configuration services of network electronics in each locations MDF or IDF may be performed at one time.
- 7.5.4.7 Any damage resulting from the work performed by STIP or its subcontractors will be at the cost and expense of STIP. All debris resulting from such work will be cleared and the work areas will be left "broom clean" upon the daily completion of work.
- 7.5.4.8 To the extent of this RFP is a contract for the construction, alternation or repair of public buildings, it is subject to the provisions of Article 8 of Chapter 143 of North Carolina General Statues. It is understood and agreed that STIP will perform the function of a "Construction Manager" for awarding sub-contracts and managing that portion of the RFP as that term is defined in NCGS 143-128.1. STIP must comply with the provisions of NCGS 143-128.1 in the performance if that portion of this RFP.
- 7.5.4.9 Relocation and testing of existing computers and telecommunications equipment(s) or systems is specifically excluded from this RFP.

7.5.5 Electrical, HVAC, and General Building renovations and Improvements. The purpose of this task is to upgrade existing Electrical, HVAC and other building related systems to meet demands of the integrated communications systems and LAN described in the RFP. These services include, but are not limited to:

- 7.5.5.1 The physical construction of new wiring closets/equipment locations and retrofits for existing wiring closets/equipment locations, (general construction buildout, HVAC, lighting, construction permits) is included in this section of the RFP.

- 7.5.5.2 Television Installation. The purpose of this task is to install wall brackets and televisions in classrooms, commons areas, and offices.
- 7.5.5.3 Installation of media retrieval, intercom, telephone systems or other equipment purchased by Owner under separate contracts as required by RFP.
- 7.5.5.4 Testing and possible relocation and reuse of CATV is included in this RFP.
- 7.5.5.5 Removal of existing cabling, wiring, or CATV cabling is included in the RFP.
- 7.5.5.6 Maintenance of existing network systems during installation of new cabling, wiring and equipment, and Coordination of transition to new systems is included in this RFP.
- 7.5.5.7 Contractor is responsible for cross connects to the telephone switch.

SECTION 8. CONTRACT REQUIREMENTS

General Terms and Condition

8 Definitions: As used herein;

- 8.01 **Design Consultants:** Design Consultants are one or more architects or engineers providing services on one or more Projects.
- 8.02 **Prime Contractor:** A Prime Contractor is any individual or firm performing Program Work and bound by an agreement enforceable at law with the Owner or the STIP.
- 8.03 **Program:** The Program is that construction to be managed as a whole and on a Project-by-Project basis under this Agreement consisting of those facilities listed at Tab 11.
- 8.04 **Project:** A Project is the Work to be performed at one school location including one or more buildings and associated site work involving one or more Prime Contractor(s) and Design Consultants.
- 8.05 **State** shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.
- 8.06 **Owner** shall mean the WS/FCS.
- 8.07 **Contractor** shall mean the Strategic Technology Integration Partner (STIP).
- 8.08 **Supplier** shall mean a first tier sub-contractor that has entered into a preferred customer agreement with STIP and Owner to supply deliverables during the term of the agreement for a stipulated or agreed upon unit price.
- 8.09 **Project Construction Team:** On an individual Project within the Program, the Owner, the STIP, the STIP's designee Design Consultant, , the Prime Contractor(s) (and/or Trade Contractors on selected Projects) shall be called the "Project Construction Team" and shall work from the beginning of design through construction completion. The STIP shall provide leadership to the Project Construction Teams on all matters relating to cost containment and expeditious Project completion.
- 8.10 **Project Budget:** The Project Budget is the statement of total Project cost for an individual school project as prepared by Owner and as adjusted from time to time by Owner.
- 8.11 **Project Budget Change Order:** A written change to the Project Budget prepared by Owner provided as a directive to the Project Construction Team and the Project Development Team to make a change to the "Project Budget" and or the "Program Narrative" as established by Owner.
- 8.12 **Project Development Team(s):** Project Development Team(s) are teams formed by the Owner for each Project to allow input in the design and construction process by persons in the community interested in a particular school project, such as a member of the Owner, the STIP, the school principal, and staff representatives.

- 8.13 **Project Work or Work:** The Project Work or Work is all construction at any Project site necessary to complete all improvements for that Project. The Program Work is all construction at all project sites necessary to complete the improvements for all Projects.
- 8.14 **Trade Contractor:** A Trade Contractor is any individual or firm performing specialty-type Program Work and bound by an agreement enforceable at law with a Prime Contractor, another Trade Contractor, the STIP or the Owner.
- 8.1 **The Contract Documents.** The Contract documents consist of this Agreement, the STIP's proposal as well as other documents listed and attached to this agreement and modifications issued after execution of this Agreement. These documents form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire integrated agreement between the parties hereto and supercedes prior negotiations, representations, either written or oral. An enumeration of the Contract Documents other than Modifications, appears in the "Table of Contents."
- 8.2 **Term of Contract and Dates of Commencement and Substantial Completion.**
- 8.2.1 The term of this Agreement is five years.
- 8.2.2 The date of commencement is the date from which the Contract Time is measured, and shall be the date of this Agreement, as first written above unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
- 8.2.3 **The Work** described in the Contract Documents consists of Work at schools listed at Tab 11 during the term of the Agreement. The Owner and STIP shall schedule the Work at the individual schools annually during the Term of the Agreement.
- 8.2.4 The STIP shall achieve Substantial Completion of the entire Program Work not later than December 31, 2007, subject to adjustments of this Contract Time as provided in the Contract Documents.
- 8.3 **Contract Sum.**
- 8.3.1 The Owner shall pay the STIP in current funds for the Contractor's performance of the Contract the Contract Sum that shall not exceed:
- 8.3.2 **Contract Sum per school.** The Owner and Contractor further agree that the above Contract Sum is based on a contract sum per individual school. The Contract sum includes:
- 8.3.2.1 Contract Sum for STIP's Management Services as set forth in Sub-section 10.1 of Financial Proposal.
- 8.3.2.2 Contract Sum for STIP's Design Services as set forth in Sub-section 10.2 of Financial Proposal.
- 8.3.2.3 Cost of Equipment and other deliverables based on Unit Prices, as listed in Sub-section 10.3, for procurement of itemized equipment.
- 8.3.2.4 Contract Sum per school for sub-contracted services, including but not necessarily limited to cabling and electrical sub-contracts, as set forth at Tab 13

8.4 **Construction Cost.** For the purpose of determining the STIP's fee for design services, the term "Construction Cost" is defined as follows:

- 8.4.1 during the design, design development and construction document phases, construction cost shall be determined by the owner's budget for the project.
- 8.4.2 during the bidding and negotiation phase, construction cost shall be determined by the lowest responsible bid or bids, including add alternates.
- 8.4.3 during the construction phase, construction cost shall be determined by the contract sum as stated in the owner-contractor agreement or agreements and any change orders formally approved by the owner and prime contractor or contractors.
- 8.4.4 The cost of the equipment and deliverables purchased and installed at each school project is a part of the "construction cost."

8.5 **Progress Payments.**

- 8.5.1 Based on Applications for Payment submitted to the Owner and Certificates for Payment issued by the STIP, the Owner shall make progress payments on account of the Contract Sum to the STIP as provided below and elsewhere in the Contract Documents.
- 8.5.2 The period covered by each Application for Payment shall be one calendar month ending on the 25th day of the month.
- 8.5.3 Provided an Application for Payment is received by the Owner not later than the **LAST WORKING DAY** of a month, the Owner shall make payment to the STIP not later than the **FIFTEENTH DAY of the NEXT month**. If an Application for Payment is received by the Owner after the Application date fixed above, payment shall be made by the Owner not later than 45 days after the Owner receives the Application for Payment.
- 8.5.4 Each Application for Payment shall be based upon the Schedule of Values and unit prices submitted by the STIP in accordance with the Contract Documents. The Schedule of Values and Unit Prices shall allocate the entire Contract Sum among the various individual schools as listed and described at Tab 11 of the Contract Documents and be prepared in such form and supported by such data to substantiate its accuracy as the Owner or STIP may require. This Schedule, unless objected to by the Owner or STIP, shall indicate the percentage of completion of each school as of the end of the period covered by the Application for Payment.
- 8.5.5 Application for Payment shall indicate the percentage of completion of each portion of the Work at each school as of the end of the period covered by the Application for Payment.
- 8.5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - 8.5.6.1 Take that portion of the Contract Sum properly allocated to the completed Work at a school as determined by multiplying the percentage completion of each portion of the Project Work by the Contract Sum listed for the school at Tab 3, less retainage of TEN percent (10%). Pending final determination of cost to the Owner of changes in the Work,

amounts not in dispute may be included even though the Contract Sum allocated for that school has not yet been adjusted by Change Order;

- 8.5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored in a bonded warehouse off site at a location agreed upon in writing), less retainage of TEN percent (10%);
- 8.5.6.3 Subtract the aggregate of previous payments made by the Owner; and
- 8.5.6.4 Subtract amounts, if any, for which the Owner on new construction or STIP on ITS projects has withheld or nullified a Certificate of Payment.
- 8.5.6.5 Upon SUBSTANTIAL Completion of the Project Work at a particular school, a sum sufficient to increase the total payments to NINETY-FIVE percent (95%) of the Contract Sum for that school, less such amounts as the Owner or STIP shall determine for incomplete Work or unsettled claims; and
- 8.5.6.6 If final completion of the Work at a school or schools is materially delayed through no fault of the STIP or by the issuance of Change Orders affecting final completion of the Work at a school or schools, and the Owner so confirms, the Owner shall, upon application by the STIP and certification by the Owner, and without terminating the Contract, make payment of the balance due for the portion of the Work at a school fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the STIP to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

8.6 **Final Payment.** Final payment, constituting the entire balance of the Contract Sum at all schools scheduled to be completed **during a fiscal year**, shall be made by the Owner to the STIP and/or Prime Contractor(s) when (1) the Contract has been fully performed at all of the schools scheduled for a fiscal year by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in the Contract Documents and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a Final Certificate for Payment has been issued by the Owner or STIP; such final payment shall be made by the Owner not more than 45 days after issuance of the Owner's or STIP's final certificate for Payment.

8.7 **Miscellaneous Provisions.**

8.7.1 Where reference is made in this Agreement to a provision to the STIP's proposal or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

8.7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing from time to time in North Carolina.

8.8 Enumeration of Contract Documents. The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.8.1 The Agreement is this executed Agreement between the Owner and Contractor.

8.8.2 Other Contract Documents are listed in the chart below as follows:

TAB	DOCUMENT TITLE OR DESCRIPTION
1.	The Request For Proposals, dated December 3, 2002
2.	STIP's Performance Proposal, dated: and Finance Proposal dated:
3.	Schedule of the Work including Commencement Date and Date of Substantial Completion per school.
4.	Contract Sum by Individual School
5.	Contract with Ambassador Technologies and Rauland-Borg Corp.
6.	Contract with Commercial Sound and Bogen Communications Inc.
7.	Labor and Product Warranty
8.	WS/FCS Policy3310, "Affirmative Action Policy for MWBE.
9.	Performance and Payment Bonds
10.	Certificate(s) of Insurance

8.9 **Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. STIP will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the WS/FCS only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or Federal Regulation,
- by Information Resource Management Commission (IRMC) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

8.10 **Site Preparation:** Contractor shall provide OWNER complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Contractor shall advise the OWNER of any site requirements for any Deliverables required by the OWNER' specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Contractor and which would involve additional expenses to the OWNER, shall be made at the expense of the Contractor.

8.11 **Goods Return:** Deliverables and any other goods or materials furnished by the Contractor and Supplier to fulfill technical requirements shall be in good working order and be maintained in good working order by Contractor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the OWNER's technical requirements shall be considered non-conforming goods and subject to return to the Contractor or Supplier for replacement at the OWNER's option, and at the Contractor's or Supplier's expense. The OWNER is responsible for the return costs related to the termination of a Contract, including

deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Contractor or delivery of non-conforming goods by Contractor or Supplier. Shipping or freight charges, if any, paid by the OWNER for non-conforming goods will be reimbursed to the OWNER.

- 8.12 **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the OWNER, Contractor shall supply proof of compliance with the specifications. Contractor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the OWNER; and any such alternates or substitutes must be accompanied by Contractor's certification and evidence satisfactory to the OWNER that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 8.13 **Warranties:** Contractor shall assign all applicable third party warranties for Deliverables to the OWNER.
- 8.14 **Personnel:** Contractor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the OWNER. Any desired substitution shall be noticed to the OWNER accompanied by the names and references of Contractor's recommended substitute personnel. The OWNER will approve or disapprove the requested substitution in a timely manner. The OWNER may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the OWNER may request acceptable substitute personnel or terminate the contract services provided by such personnel.
- 8.15 **Subcontracting:** The Contractor may subcontract the performance of the Work with other Contractors or third parties with the prior written consent of the OWNER. Contractor shall provide the OWNER with complete copies of any agreements made by and between Contractor and all subcontractors. The selected Contractor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Contractor. Any contracts made by the Contractor with a subcontractor shall include an affirmative statement that the OWNER is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the OWNER; and that the OWNER shall be indemnified by the Contractor for any claim presented by the subcontractor. Notwithstanding any other term herein, Contractor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 8.16 **Contractor's Representation:** Contractor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Contractor agrees that it will not enter any agreement with a third party that might abridge any rights of the OWNER under this Contract. Contractor will serve as the prime Contractor under this Contract. Should the OWNER approve any subcontractor(s), the Contractor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Contractors or subcontractors of Contractor may appear for purposes of convenience in Contract documents; and shall not limit Contractor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Contractor. Contractor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- 8.17 **Software License.** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Contractor and Supplier grant the OWNER a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The OWNER shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The OWNER may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The OWNER shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The OWNER may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the OWNER's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the OWNER shall (1) destroy all software copies made by the OWNER, (2) deliver the original or any replacement copies of the software to the transferee, and (3) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Contractor, or Contractor's licensors. The OWNER shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 8.18 **Maintenance/Support Services:** For the first year and all subsequent Contract years, Contractor and Supplier agree to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:
- 8.18.1 **Error Correction.** Upon notice by OWNER of a problem with the Software (which problem can be verified), Contractor and/or Supplier shall use reasonable efforts to correct or provide a working solution for the problem. The OWNER shall comply with all reasonable instructions or requests of Contractor and/or Supplier in attempts to correct an error or defect in the Program. Contractor and the OWNER shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.
- 8.18.2 Contractor and/or Supplier shall notify the OWNER of any material errors or defects in the Deliverables known, or made known to Contractor or Supplier from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Contractor and/or Supplier shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- 8.18.3 **Updates.** Contractor and/or Supplier shall provide to the OWNER, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Contractor and/or Supplier and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.

- 8.18.4 **Telephone Assistance.** Contractor and/or Supplier shall provide the OWNER with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Time, Monday-Friday. Contractor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.
- 8.19 **Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Contractor shall provide written notification of the necessary alteration(s) to the OWNER. The OWNER reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The OWNER may advise Contractor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the Owner. In such event, Contractor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the OWNER, the OWNER may terminate this Contract and compensate Contractor for sums due under the Contract.
- 8.20 **Availability of Funds:** Any and all payments to Contractor and Supplier are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the OWNER for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the OWNER's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature and the Board of Forsyth County Commissioners for the purposes set forth in the Contract. If funds to effect payment are not available, the OWNER will provide written notification to Contractor. If the Contract is terminated under this paragraph, Contractor agrees to take back any affected Deliverables and software not yet delivered or stored in bonded warehouse under this Contract, terminate any services supplied to the OWNER under this Contract, and relieve the OWNER of any further obligation thereof. The OWNER shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 8.21 **Payment Terms:** Payment terms are set forth in sections 8.4 and 8.5 above. OWNER is responsible for all payments under the Contract. Upon Contractor's written request of not less than 30 days and approval by OWNER, the Owner may:
- 8.21.1 Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - 8.21.2 Include any person or entity designated in writing by Contractor as a joint payee, including Supplier, on the Contractor's payment check(s), however
 - 8.21.3 In no event shall such approval and action obligate the OWNER to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all Contract obligations.
- 8.22 **Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the OWNER shall have the obligation to notify Contractor and/or Supplier, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the OWNER shall not be

unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the OWNER may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Contractor and/or Supplier fails to promptly cure the defect or replace the Deliverables, the OWNER reserves the right to cancel the Purchase Order, contract with a different Contractor or Supplier, and to invoice the original Contractor for any differential in price over the original Contract price. When Deliverables are rejected, the Contractor must remove the rejected Deliverables from the premises of the OWNER within seven (7) calendar days of notification, unless otherwise agreed by the OWNER. Rejected items may be regarded as abandoned if not removed by Contractor as provided herein.

- 8.23 **Equal Employment Opportunity:** Contractor shall comply with all Federal and Owner requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 8.24 **Affirmative Action Contracting.** Contractor shall make a good faith effort to recruitment and select minority businesses for participation in this contract and shall comply with the provisions of NCGS §143-128.
- 8.25 **Inspection at Contractor's Site:** The OWNER reserves the right to inspect, during Contractor's and/or Supplier's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Contractor and/or Supplier prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
- 8.26 **Advertising/Press Release:** The Contractor and Supplier absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the OWNER.
- 8.27 **Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the Owner competitive bidding process, the OWNER may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Contractor and Supplier may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Contractor and Supplier warrant that each has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The OWNER may serve as custodian of Contractor's and Supplier's confidential information and not as an arbiter of claims against Contractor's and/or Supplier's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the OWNER to disclose information marked confidential, the Contractor and/or Supplier agree that it will intervene in the action through its counsel and participate

in defending the OWNER, including any public official(s) or public employee(s). The Contractor and Supplier agree that each shall hold the OWNER and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the OWNER in the action. The OWNER agrees to promptly notify the Contractor and Supplier in writing of any action seeking to compel the disclosure of Contractor's and/or Supplier's confidential information. The OWNER shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The OWNER shall have no liability to Contractor or Supplier with respect to the disclosure of Contractor's or Supplier's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

8.27.1 Care of Information: Contractor and Supplier agree to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the OWNER during performance of any contractual obligation from loss, destruction or erasure.

8.27.2 Contractor and Supplier warrant that all their employees and any approved third party Contractors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Contractor will, upon request of the OWNER, verify and produce true copies of any such agreements. Production of such agreements by Contractor and Supplier may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Contractor and/or Supplier produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The OWNER may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the OWNER for Contractor's and/or Supplier's execution. The OWNER may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, Owner, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Information Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

8.27.3 Nondisclosure: Contractor and Supplier agree and specifically warrants that each, their officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the OWNER.

8.28 **Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of OWNER and must be kept confidential or returned to OWNER or destroyed as required by the Owner. Proprietary Contractor and/or Supplier materials licensed to OWNER shall be identified to OWNER by Contractor and/or Supplier prior to use or provision of services hereunder and shall remain the property of the Contractor. Embedded software or firmware shall not be a severable Deliverable. OWNER's scope statement may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to OWNER, at no additional license fee, pursuant to the terms of the software license

contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

- 8.29 Late Delivery, Back Order:** Contractor and/or Supplier shall advise OWNER contact person immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Contractor and/or Supplier shall notify Owner of the projected delivery time and date. In the event the delay projected by Contractor and/or Supplier is unsatisfactory, OWNER shall so advise Contractor and Supplier and may proceed to procure substitute Deliverables or services.

8.30 Patent, Copyright, and Trade Secret Protection:

- 8.30.1 Contractor and/or Supplier has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the OWNER, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent that any Contractor and/or Supplier Technology is contained in any of the Deliverables including any derivative works, the Contractor and Supplier hereby grant OWNER a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor and/or Supplier Technology in connection with the Deliverables for OWNER's purposes.
- 8.30.2 Contractor and Supplier shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by OWNER to Contractor. OWNER hereby grants Contractor and Supplier a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Contractor's and/or Supplier's internal use to non-confidential Deliverables first originated and prepared by the Contractor or Supplier for delivery to OWNER.
- 8.30.3 The Contractor and/or Supplier, at their own expense, shall defend any action brought against OWNER to the extent that such action is based upon a claim that the services or Deliverables supplied by the Contractor and/or Supplier, or the operation of such Deliverables pursuant to a current version of Contractor/Supplier-supplied software, infringes a United Owners patent, or copyright or violates a trade secret. The Contractor and/or Supplier shall pay those costs and damages finally awarded against the OWNER in any such action. Such defense and payment shall be conditioned on the following:
- 8.30.3.1 that the Contractor and Supplier shall be notified within a reasonable time in writing by the OWNER of any such claim; and,
- 8.30.3.2 that the Contractor and/or Supplier shall have the control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the OWNER shall have the option to participate in such action at its own expense.
- 8.30.4 Should any services or software supplied by Contractor and/or Supplier, or the operation thereof become, or in the Contractor's and/or Supplier's opinion are likely to become, the subject of a claim of infringement of a United Owners patent, copyright, or a trade secret, the OWNER shall permit the Contractor and/or Supplier, at its option and expense, either to procure for the OWNER the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all

material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the OWNER shall be prevented by injunction, the Contractor and/or Supplier agrees to take back such goods/hardware or software, and refund any sums the OWNER has paid Contractor and Supplier less any reasonable amount for use or damage and make every reasonable effort to assist the OWNER in procuring substitute Deliverables. If, in the sole opinion of the OWNER, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Contractor and Supplier under this Contract impractical, the OWNER shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Contractor and/or Supplier agrees to take back such Deliverables and refund any sums the OWNER has paid Contractor and Supplier less any reasonable amount for use or damage.

- 8.30.5 Contractor and Supplier will not be required to defend or indemnify the OWNER if any claim by a third party against the Owner for infringement or misappropriation (1) results from the OWNER's alteration of any Contractor/Supplier-branded product or Deliverable, or (2) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe on a trade secret of a third party.
- 8.30.6 Nothing stated herein, however, shall affect Contractor's and/or Supplier's ownership in or rights to its preexisting intellectual property and proprietary rights.
- 8.31 **Access to Persons and Records:** Pursuant to N.C. General Statute 147-64.7, the OWNER is authorized to examine all books, records, and accounts of the Contractor and/or Suppliers insofar as they relate to transactions with Owner pursuant to the performance of this Contract or to costs charged to this Contract. The Contractor and Supplier shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by the OWNER, if in the OWNER's opinion, such requirement is imposed by federal or Owner law or regulation.
- 8.32 **Assignment:** Contractor and Supplier may not assign this Contract or its obligations hereunder without prior written approval of Owner. Contractor and Supplier shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract according to the terms and conditions agreed, and that Contractor and Supplier shall affirm that the assignee is fully capable of performing all obligations of Contractor under this Contract. An assignment may be made, if at all, in writing by the Contractor, Supplier, Assignee and the OWNER setting forth the foregoing obligation of Contractor and Assignee.
- 8.33 **Insurance Coverage:** During the term of the Contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:
- 8.33.1 **Worker's Compensation** - The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the Contract. If any work is sublet, the Contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract ; and

- 8.33.2 **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- 8.33.3 **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$10,000.00 medical payment; and
- 8.33.4 **Umbrella**: The umbrella must follow-form over the general liability, employer's liability and automobile liability. \$2,000,000 each Occurrence with \$2,000,000 aggregate.
- 8.33.5 Providing and maintaining adequate insurance coverage described herein is a material obligation of the Contractor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.
- 8.33.6 **Certificates of Insurance** acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph shall contain a provision that names the Owner as an additional insured and states that coverages afforded under the policies will not be cancelled, reduced in amount, modified or allowed to expire until at least 30 days prior written notice has been given to the owner by certified mail. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Application for Payment. If this insurance is written on the comprehensive general liability policy form, the certificates shall be AIA document G705, certificate of insurance. If the insurance is written on a commercial general liability policy form, accord certificate of insurance form 25S will be acceptable.

8.34 **Dispute Resolution:**

- 8.34.1 The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Contractor shall be submitted in writing to the OWNER for decision. A claim by the OWNER shall be submitted in writing to the Contractor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 8.34.2 **Voluntary Mediation or Arbitration.** Any controversy or claim arising out of or relating to the Contract or the breach thereof, may be settled by voluntary

mediation and/or arbitration by mutual agreement between or among the parties in interest in accordance with the North Carolina Uniform Arbitration Act, N.C.G.S. §1-567.1 et seq., or any other mediation or arbitration procedure mutually agreeable to the parties.

8.35 Default: In the event any Deliverable furnished by the Contractor and/or Supplier during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the OWNER and the failure is not cured within ten (10) days, the OWNER may cancel and procure the articles or services from other sources; holding Contractor and Supplier liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 8.32 and 8.33 and the obligation to informally resolve disputes as provided in Paragraph 8.28 of these General Conditions. The OWNER reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Contractor without expense to the OWNER. The rights and remedies of the OWNER provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

8.35.1 If Contractor and Supplier fails to deliver Deliverables within the time required by this Contract, the Owner may provide written notice of said failure to Contractor and Supplier, and by such notice require payment of a penalty.

8.35.2 Should the Owner fail to perform any of its obligations upon which Contractor's performance is conditioned, Contractor shall not be in default for any delay, cost increase or other consequences due to the Owner's failure. Contractor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Contractor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Owner shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

8.35.3 Contractor shall provide a plan to cure any default if requested by the Owner. The plan shall notify Owner of the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Contractor may deem necessary or proper to provide.

8.36 Waiver of Default: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Owner and the Contractor, and made as an amendment to this Contract.

8.37 Termination: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

8.37.1 The parties may mutually terminate this Contract by written agreement at any time.

8.37.2 Termination for Cause: In the event any goods, software, or service furnished by the Contractor and/or Supplier during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Contractor and Supplier, the Owner may cancel and procure the articles or services from other sources; holding Contractor and Supplier liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 10.29 and 10.30 herein. The rights and remedies of the Owner provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or

under the Contract. Contractor and Supplier shall not be relieved of liability to the Owner for damages sustained by the Owner arising from Contractor's and/or Supplier's breach of this Contract; and the Owner may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Contractor and/or Supplier shall be cause for termination.

- 8.37.3 Termination For Convenience Without Cause: The Owner may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Contractor and Supplier. Contractor and Supplier shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Owner, the Owner will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

8.38 Limitation of Contractor's and Supplier's Liability:

- 8.38.1 Where Deliverables are under the Owner's exclusive management and control, the Contractor and Supplier shall not be liable for direct damages caused by the Owner's failure to fulfill any Owner responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Owner's intended use of the Deliverables.
- 8.38.2 The Contractor's and Supplier's liability for damages to the Owner for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the Owner's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Contractor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- 8.38.3 The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's and/or Supplier's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

8.39 Contractor's Liability for Injury to Persons or Damage to Property:

- 8.39.1 The work described in the contract documents, in general, will be performed on actively operative, elementary or secondary school sites. The contractor shall take reasonable precautions necessary to provide for the safety of school children and to prevent school children from entering the construction site or an area where materials are stored.
- 8.39.2 The Contractor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the Owner, employees of the Owner, persons designated by the Owner for training, or person(s) other than agents or employees of the Contractor, designated by the Owner for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the Owner's place of business,

provided that the injury or damage was caused by the fault or negligence of the Contractor.

- 8.39.3 The Contractor agrees to indemnify, defend and hold the Owner and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Contractor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- 8.39.4 Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Contractor's goods.
- 8.40 **General Indemnity:** The Contractor shall hold and save the Owner, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Contractor shall be conditioned upon the following:
- 8.40.1 The Owner shall give Contractor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- 8.40.2 The Contractor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Owners shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.
- 8.41 **Stop Work Order:** OWNER may issue a written Stop Work Order to Contractor and Supplier for cause at any time requiring Contractor and Supplier to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor and Supplier. The 90-day period may be extended for any further period for which the parties may agree.
- 8.41.1 The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Contractor and Supplier shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Contractor and Supplier, or within any extension of that period to which the parties agree, the Owner shall either:
- 8.41.1.1 Cancel the Stop Work Order, or
- 8.41.1.2 Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- 8.41.2 If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor and Supplier shall resume work. The Owner shall make an equitable adjustment in the delivery

schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

8.41.2.1 The Stop Work Order results in an increase in the time required for, or in the Contractor's or Supplier's cost properly allocable to the performance of any part of this Contract, and

8.41.2.2 The Contractor and/or Supplier asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the Owner decides the facts justify the action, the Owner may receive and act upon a proposal submitted at any time before final payment under this Contract.

8.41.3 If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the Owner, the Owner shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

8.41.4 OWNER shall not be liable to the Contractor or Supplier for loss of profits because of a Stop Work Order issued under this term.

8.42 **Time is of the Essence.** Time is of the essence in the performance of this Contract.

8.43 **Date and Time Warranty:** The Contractor and Supplier warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

8.44 **Independent Contractors:** Contractor, Supplier and their employees, officers and executives, and subcontractors, if any, shall be independent Contractors and not employees or agents of the Owner. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

8.45 **Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing Owner Agency. In cases where parties, other than the Contractor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

8.46 **Notices:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

8.47 **Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

8.48 **Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Owner and Contractor.

8.49 **Taxes:** The Owner is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Contractor or for any taxes levied on employee wages. Applicable Owner or local sales taxes shall be invoiced as a separate item.

8.50 **Governing Laws, Jurisdiction, and Venue:**

8.50.1 This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Forsyth County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Contractor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Forsyth County shall be the proper venue for all matters.

8.50.2 Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

8.51 **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

8.52 **Compliance with Laws:** The Contractor and Supplier shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and/or authority.

8.53 **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

8.54 **Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Owner shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

8.55 **Changes in the Work.**

8.55.1 Changes in the Work may be accomplished after execution of the Contract, without invalidating the Contract, by Change Order or order for a minor change in the Work.

- 8.55.2 A Change Order shall be based upon agreement among the Owner, STIP, Contractor, and Supplier. The Owner or STIP alone may issue a minor change in the work.
- 8.55.3 A Change Order is a written agreement between the Owner, STIP, Contractor and, if appropriate, the Supplier stating their agreement on the following:
 - 8.55.3.1 A change in the Work;
 - 8.55.3.2 The amount of the adjustment in the Contract Sum, if any, per school; and
 - 8.55.3.3 The extent of the adjustment of the Contract Time, if any.
- 8.55.4 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or order for a minor change in the Work.
- 8.55.5 If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods.
 - 8.55.5.1 The unit prices stated in the Contract Documents. Unit prices shall be used to make adjustments in the Contract Sum in the event schools are added to or deleted from the Scope of the Work described in the Change Order or adjusted proportionately if the quantity of deliverables at a school is increased or decreased.
 - 8.55.5.2 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - 8.55.5.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee.
- 8.55.6 The Owner or STIP shall have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extensions of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor and Supplier, if applicable. The Contractor shall carry out such written orders promptly.
- 8.56 **Preferred Customer Agreement(s) with Supplier(s).** Owner will accept proposals of the Contractor to enter into "Preferred Customer" Agreement(s) with Supplier(s) that are included with Contractor's Financial Proposal.
- 8.57 **Performance and Payment Bonds.** The Contractor shall provide to Owner performance and payment bonds as required by N.C.G.S. §143-129(c) and Article 3 of Chapter 44A for the full amount of the Project to secure the faithful performance of the terms of the contract and the payment of all sums due for labor and materials less the amount due to be paid the Supplier for apparatus, supplies, materials, or equipment under the Preferred Customer Agreement.

SECTION 9, FORM FOR SUBMITTAL OF PERFORMANCE PROPOSAL

- 9 **Proposal Format.** The Performance proposal should be organized in the exact order in which the requirements are presented in the Section 6 of the RFP. The Execution of the Proposal must be placed at the front of the proposal. Each page should be numbered. The proposal should contain a table of contents, which cross-references the RFP requirements and the specific page of the response in the STIP's proposal. Demonstrate eligibility for each additional attachment in separate sections of your response. (i.e. different chapters in a book).
- 9.1 **Trade Secrets.** Do not mark your entire response as "Confidential and/or Proprietary". Only information referenced in the NC Information Technology General Terms and Conditions for Goods and Related Services, Section 8.33, "Confidentiality" may be confidential.
- 9.2 **General Instructions.** STIPs are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:
 - 9.2.1 Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
 - 9.2.2 The response should be complete and comprehensive, with a corresponding emphasis on being concise and clear.
 - 9.2.3 STIPs are required to provide contact information in their RFP Response. Tab 15, STIP Contact Information, must be included in the proposal package. Eligible STIPs that have subsequent changes to contact information must provide the changes to the WS/FCS School Attorney within ten (10) business days of the change. Notifications of amendments to Scope Statements are accomplished via email; therefore, failure to provide changes may result in your company being omitted from notification.
- 9.3 **Disclosure of Litigation.** The STIP's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to WS/FCS, may constitute a material breach of this Contract.
- 9.4 The STIP shall notify WS/FCS in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide services under any Scope Statement awarded pursuant to this RFP, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. STIP shall promptly notify WS/FCS of any criminal litigation, investigations or proceeding involving Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract or any Scope Statement awarded to STIP.
- 9.5 STIP shall notify WS/FCS in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its bid proposal, or which may occur during the term of any Scope Statement awarded to STIP pursuant to this RFP, that involve (1) services or related goods similar to those provided pursuant to any Scope Statement and that involve a claim in excess of \$250,000 or that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written

allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor, in any an amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.

- 9.6 All notices under subsection 9.3.1 and 9.3.2 herein shall be provided in writing to WS/FCS within thirty (30) calendar days after the STIP learns about any such criminal or civil matters; unless such matters are governed by the ITS General Terms and Conditions for Goods and Services. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of WS/FCS.
- 9.7 **Assurances** - In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to WS/FCS pursuant to this Section, or of which WS/FCS otherwise becomes aware, during the term of this Contract, causes WS/FCS to be reasonably concerned about:
- 9.7.1 the ability of the STIP or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- 9.7.2 whether the STIP or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of law, regulation or public policy, then the STIP shall be required to provide WS/FCS all reasonable assurances requested by WS/FCS to demonstrate that: (a) the STIP or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the STIP or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.
- 9.8 **Execution of Proposal.** Vendors must submit a signed copy of the Execution of Proposal with each copy of their proposal in accordance with the instructions of this RFP.

Section 10, FINANCIAL PROPOSALS

10. **Introduction.** This section is to be completed during the second phase of the selection process. The format below is to be used. Alternative methods may be submitted by an STIP but may not be considered by WS/FCS.

10.1 **Management Fee** - In this sub-section, the STIP is requested to provide a fixed total cost or price that includes ALL of STIP's costs for the following management services as described in Section 7 of the RFP over the five years of the Project.

10.1.1 Project Management & Systems Integration

10.1.2 Construction Management

10.1.3 Staff Development & Training

10.2 **Design Fee.** In this section, the STIP is requested to provide a fee based on a percentage of the "construction cost", as the term is defined in Section 8 of the RFP, for the design services described in Section 7 of the RFP and summarized below.

10.2.1 Network technology design

10.2.2 Architectural design

10.2.3 Electrical design

10.2.4 Ventilation design

10.3 **Equipment Procurement, Discount Prices.** In this sub-section, the STIP is to state the quantity discount, as a percentage of the manufactured suggested retail price, for each of the major items of equipment listed in Section 7 of the RFP that will be provided during the term of the agreement based on a "preferred provider" agreement with one or more suppliers, including but not necessarily limited to:

10.3.1	Fiber Optic Cabling
10.3.2	CAT5E cabling
10.3.3	Video Cabling
10.3.4	Cable Termination Equipment
10.3.5	DSU's
10.3.6	Exposed wiring pathways
10.3.7	Racks-patch panels-cabinets
10.3.8	Televisions
10.3.9	TV brackets or wall mounts
10.3.10	Electrical components
10.3.11	Routers
10.3.12	Layer 2 and 3 Switches
10.3.13	Switch enclosures
10.3.14	UPS Devices
10.3.15	Fiber Termination Enclosures
10.3.16	Wireless airports

10.4 **Submittal of a School Price Comparison.** In this sub-section, the STIP is to visit and inspect Sedge Garden Elementary School; evaluate its existing technology infrastructure; evaluate its electrical, mechanical and ventilation systems; design an integrated communications system as described in the Section 7, Scope of the Work, including but not limited to voice, video, intercom, clocks, wireless and data; and state the STIP's best estimate for the total cost of construction for the school project, including but not limited to:

- 10.4.1 the procurement of all the equipment specified in the design;
 - 10.4.2 the installation of all the equipment specified in the design;
 - 10.4.3 the design and installation of LAN cabling;
 - 10.4.4 the design and upgrading of the electrical system, if needed;
 - 10.4.5 the design and upgrading of the ventilation system, if needed;
 - 10.4.6 the design and upgrading of the mechanical system, if needed;
 - 10.4.7 The testing of the systems to ensure that they function as designed and requested by the Owner; and
 - 10.4.8 The training of WS/FCS personnel
 - 10.4.9 Include in your detailed bid cost tabulation sheet, if applicable, an itemization of the work you propose to be self-performed and the method for reimbursement.
 - 10.4.9.1 Include itemized cost of all hourly paid employees, their wages, payroll taxes, and benefits.
 - 10.4.9.2 Furnish hourly rate chart for all labor categories without hourly burdens, fringes, taxes, insurance, etc. (adjustable yearly).
 - 10.4.9.3 Furnish markup burden rate as % of payroll (adjustable yearly)
 - 10.4.10 Include an estimate of the Design Fees for the Project using % method for each electrical, plumbing/HVAC, data/network and architectural contractors
 - 10.4.11 Include the estimates bid prices for contractor services as described in RFP
 - 10.4.12 Include unit prices (or how quantity discounts per Mfg. district wide discounts will be used).
 - 10.4.13 Include all items for bonds, insurance, tax purposes.
 - 10.4.14 Identify tax reimbursable materials amount for reimbursement.
 - 10.4.15 Include owner's media and intercom system contractor pricing.
- 10.5 **Guaranteed Budget.** In this section, the STIP shall state whether the STIP is willing to guarantee that the Work described in this RFP will be completed within WS/FCS \$14.4 Million dollar budget, which budget may be amended by mutual agreement of the parties as set forth in Section 8.54, "Changes of the Work", in terms of a percentage deduction in its Management and Design Fees corresponding to the extent to which the project exceeds the Budget. In other words, if the total cost of the Project exceeds the budget by 10%, the STIP agrees to a 10% deduction in its Management and Design Fees.
- 10.6 **Staffing Plan.** STIP shall submit with its Financial Proposal a Staffing Plan as required by Section 7.2.1.2 of the RFP.

BID SHEET

10.1 Management Fee:	\$
10.2 Design Fee:	%
10.2.1 Architectural Design Fee	%
10.2.2 Network Design Fee	%
10.2.3 Electrical Design Fee	%
10.2.4 HVAC Design Fee	%
10.3 Equipment Procurement, Discount Prices	
Fiber Optic Cabling	%
CAT5E cabling	%
Video Cabling	%
Cable Termination Equipment	%
DSU's	%
Exposed wiring pathways	%
Racks-patch panels-cabinets	%
Televisions	%
TV brackets or wall mounts	%
Electrical components	%
Routers	%
Layer 2 and 3 Switches	%
Switch enclosures	%
UPS Devices	%
Fiber Termination Enclosures	%
Wireless airports	%
10.4 Projected Budget for Sedge Garden Elementary School. Attach a proposed design solution with sufficient detail for Owner to evaluate STIP's performance, including a detailed bid cost tabulation sheet.	\$
10.5 Guaranteed Budget. If the total cost of the Program exceeds the Owner's budget, the STIP agrees to a pro rata deduction in its Management and Design Fees.	<input type="checkbox"/> Yes <input type="checkbox"/> No

By signing below, the Vendor certifies the following:

1. That this Financial proposal was signed by an authorized representative of the firm;
2. That the Vendor agrees to all the mandatory terms and conditions of this contract;
3. That the Vendor agrees to abide by all IRMC Policies, Standards and Procedures and in addition, adhere to the Statewide Technical Architecture;

Therefore in compliance with the foregoing STIP Contract RFP and subject to all terms and conditions, including all exhibits, the undersigned offers and agrees to furnish the services described therein if the proposal is accepted by the WS/FCS.

VENDOR NAME:	
By: (Signature)	Printed name:
Title:	Date:
Attest:	Federal Tax ID or Social Security Number:
<p>NOTE: If the Vendor is a corporation, this contract shall be signed by the corporation's president, vice president, or an assistant vice president who has the actual authority to bind the corporation to this contract.</p>	

STATE OF NORTH CAROLINA STRATEGIC TECHNOLOGY INTEGRATION
COUNTY OF FORSYTH PARTNER AGREEMENT

AGREEMENT is made this the 1st day of April, 2003 by and between WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, a public body corporate as provided by NCGS §115C-40, located at 1605 Miller Street, Winston-Salem, North Carolina, hereinafter referred to as "WS/FCS" and Eperitus, LLC, a Virginia limited liability company, located at 211 West Broad Street, Richmond, Virginia, hereinafter referred to as "STIP".

WITNESSETH:

- 1.0 **Introduction.** WS/FCS has a continuing need for a strategic technology integration partner that has the depth, breadth and quality of resources necessary to manage a broad variety of technology integration projects. STIP is fully capable of providing the consulting, design, program and project management services and other resources necessary to address the instructional, administrative and operational technology needs of WS/FCS as described in the Strategic Technology Integration Partner Request for Proposals, hereinafter referred to as the "RFP." The work to be performed **and/or services to be provided** by STIP will consist of ~~those any and all~~ aspects of technology integration as described in the RFP dated December 2, 2002. WS/FCS' transition to an integrated technology approach and migration to new information and information technologies will require the STIP to take an enterprise focus throughout the time period covered by this Agreement. Under the terms of this agreement the STIP will design, deploy, manage, support, and retire IT assets throughout the enterprise. STIP will work with WS/FCS to ensure the continued evolution of standard computing, application, and network platforms throughout the district. By entering into this Agreement, WS/FCS seeks to obtain the benefit of the expertise, experience and resources of STIP for the services and projects described in the RFP. By executing this Agreement, the STIP represents that it is fully capable of **providing** and **agrees** ~~intends~~ to provide the products, services and solutions desired by WS/FCS as described in the RFP. The parties acknowledge that maximum efficiency and the successful completion of the Program planned by WS/FCS requires the good faith cooperation of all parties and the diligent performance of all obligations assumed by all parties involved.
- 2.0 **Term.** The term of this Agreement is five years beginning April 1, 2003 and

continuing through March 31, 2008. The ~~STIP is to~~ achievement of Substantial Completion of the entire Program Work by no later than December 31, 2007 as set forth in section 8.2 of the RFP **is a part of this Agreement.**

3.0 **Compensation.** For and in consideration of the satisfactory performance of the services described herein, WS/FCS agrees to compensate the STIP as set forth below.

3.1 **Management Services:** For the satisfactory performance of the Program and Construction Management Services as set forth in section 7.2 of the RFP WS/FCS agrees to pay STIP the sum of two million, nine-hundred ninety-four thousand, six hundred seventy and no/100's dollars (\$2,994,670.00). The said sum **(the Management Fee)** shall be paid in the following manner or schedule:

- 3.1.1 Twenty percent or Five hundred ninety-eight thousand, nine hundred thirty-three and 99/100's dollars (\$598,933.99) **of the Management Fee** to be paid in equal monthly installments of \$99,822.33 dollars during the first six months of the Agreement based on Applications for Payment as set forth in section 8.5 of the RFP and
- 3.1.2 Eighty percent of the Management Fee or \$2,395,736.10 to be paid in equal monthly installment of \$49,911.17 during the next 48 months of the agreement based on Applications for Payment as set forth in section 8.5 of the RFP.
- 3.1.3 Ten percent of each monthly installment shall be retained by the Owner to ensure satisfactory and timely performance and completion of the Work.
- 3.1.4 Upon **substantial** ~~satisfactory~~ completion of each year's scheduled Projects during the term of the agreement, 50% of the amount retained **of the Management Fee** for that year's projects shall be paid to the STIP.
- 3.1.5 In the event the Work is not progressing on schedule and/or budget, the Owner reserves the right to withhold the full ten percent (10%) retainage **until progress is demonstrated by STIP.**
- 3.1.6 Upon FINAL completion of the entire Program within the contract's term and budget, the remainder of the **Management Fee** ~~amount~~ retained shall be paid to the STIP.